

## E10FREES

## Sentence

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

V.

12 CR 629 (VM)

CHRISTOPHER REESE,

Defendant.

New York, N.Y.  
January 24, 2014  
9:30 a.m.

Before:

HON. VICTOR MARRERO,

District Judge

## APPEARANCES

PREET BHARARA

United States Attorney for the  
Southern District of New York

MICAH SMITH

Assistant United States Attorney

ALLAN HABER

Attorney for Defendant

E10FREES

Sentence

1 (Case called)

2 (In open court)

3 THE COURT: This is a proceeding in the matter of  
4 United States v. Christopher Reese, docket number 12 CR 629 and  
5 it is scheduled as the sentencing of the defendant in this  
6 matter. Counsel, please enter your appearances for the record.

7 MR. SMITH: Good morning, your Honor. Micah Smith for  
8 the government with me at counsel table is Melissa Vermeer, an  
9 intern with the United States Attorney's Office.

10 MR. HABER: Good morning, your Honor, Alan Haber for  
11 the defendant.

12 THE COURT: The Court notice the defendant is seated  
13 next to his attorney. I've read and reviewed the presentence  
14 report dated July 25, 2013 prepared in connection with the  
15 sentencing of Mr. Reese. I also read the memorandum from  
16 defense counsel dated October 16, 2013 and the memorandum from  
17 the government dated December 13, 2013. I'm sorry, counsel's  
18 memo is October 16, 2013, the government's memo December 13,  
19 2013 and the supplemental memorandum from defense counsel dated  
20 January 18, 2014.

21 Mr. Smith has the government read and reviewed the  
22 presentence report?

23 MR. SMITH: Yes, your Honor.

24 THE COURT: Does the government have any objections to  
25 the report to raise at this point?

E10FREES

Sentence

1                   MR. SMITH: Your Honor, we don't have any objections.  
2 We do have a couple of places where we would submit that the  
3 calculation should be different, at least in one respect that  
4 difference is not actually a disagreement just that the  
5 presentence report deferred a determination and then the  
6 presentence report also doesn't take a position on the other  
7 issue that we briefed and in particular one is whether the  
8 obstruction of justice enhancement should apply. The PSR  
9 expressly notes that it will defer the Court's determination on  
10 that and then secondly the PSR doesn't take a position on  
11 whether there should be an upward enhancement of the criminal  
12 history category.

13                   THE COURT: Thank you. Those matters are laid out in  
14 your memorandum and I have reviewed them and considered them.

15                   Mr. Haber have you read and reviewed the presentence  
16 report?

17                   MR. HABER: I have, your Honor. Other than the  
18 objections that were filed by Mr. Reese before I became  
19 counsel, we don't have any additional remarks other than what  
20 was in our memo.

21                   THE COURT: All right. Thank you.

22                   Mr. Reese, please rise. Have you read and reviewed  
23 the presentence report?

24                   THE DEFENDANT: Yes, I have, your Honor and discussed  
25 it with counsel.

E10FREES

Sentence

1                   THE COURT: Have you had an opportunity to discuss it  
2 with your attorney?

3                   THE DEFENDANT: Yes, I have.

4                   THE COURT: Thank you. Be seated. On March 29, 2013  
5 Mr. Reese was found guilty by a jury on Counts One, Two, Three  
6 and Four of indictment S2 12 CR 629, which charged him with  
7 conspiracy to commit bank fraud in violation of 18, United  
8 States Code 1349, a class B felony; bank fraud in violation of  
9 18, United States Code, Section 1344, also a class B felony;  
10 conspiracy to commit wire fraud in violation of 18, United  
11 States Code Section 1349, a class C felony and aggravated  
12 identity theft in violation of 18, United States Code Section  
13 1028A, a class E felony.

14                  Mr. Smith does the government have any additional  
15 comments in connection with today's sentencing?

16                  MR. SMITH: No, your Honor. We set forth our position  
17 in our submissions.

18                  THE COURT: Mr. Haber do you have any additional  
19 comments in connection with the sentencing of Mr. Reese?

20                  MR. HABER: Your Honor, other than, I think we have a  
21 pretty full record here. There's been a lot of correspondence  
22 and a lot of filings the. Other than the fact that if we look  
23 at the whole package rather than just the trial transcripts I  
24 think we see we can take a different view of whether or not, I  
25 think the big issue here is whether or not Mr. Reese will

E10FREES

Sentence

1 recidivate again when he gets out. I think there are certainly  
2 a number of factors that need to be considered by the Court.  
3 Of primary interest, at least to me and I believe to Mr. Reese,  
4 is his medical condition which is well documented. I don't  
5 think that he -- I think as probation suggests, a 14 year  
6 sentence would be comparable to a death sentence to him given  
7 his fragile medical condition.

8 I also know that Mr. Reese sent a letter to the Court,  
9 I don't know whether or not that was mentioned in your opening  
10 statement, about what motivated him and what brought him to do  
11 what he has done repeatedly in his younger life, and there's  
12 certainly no excuse for what he did but I think it puts it into  
13 a different perspective and hopefully the Court will give that  
14 some consideration as well.

15 I also note that Mr. Reese had sent a letter to the  
16 Court and asked that it be filed under seal which I assume, I  
17 believe that the Court granted because I haven't seen it on  
18 ECF, and I would ask the Court to take that into consideration  
19 as well when sentencing him.

20 He obviously has made some bad, poor choices in his  
21 life and I've had a lot of discussions with him during the  
22 rather short period that I represented him. He's a very bright  
23 individual, maybe in an aggressive way that doesn't show his  
24 favorable light, but he's extraordinarily bright and he's  
25 wasting his life away doing what he's been doing. He has

E10FREES

Sentence

1 potential. I've represented many people in this courtroom, in  
2 this courthouse, and it's rare that you find an individual that  
3 can think legally and write as well as he does, given his  
4 minimal education.

5 So I would ask the Court to take all of that into  
6 consideration when sentencing him and draw attention  
7 specifically to one of the issues in my original sentencing  
8 letter requesting that the Court grant an application to allow  
9 him to stay in the MCC for 90 days so that he can confer with  
10 an appeals lawyer. There's a dual reason I think for this  
11 request. One is medical. There are certain medical treatments  
12 that he gets at the MCC that I don't believe are available in  
13 the MDC and normally when someone is sentenced they immediately  
14 move the defendant to the MDC. So we would ask that the Court  
15 grant that application to keep him at the MCC for 90 days after  
16 his sentencing today.

17 Other than that, I have no other applications, your  
18 Honor.

19 THE COURT: All right. Thank you. Let me note for  
20 the record that the Court received and considered a letter Dade  
21 December 10, 2013 as well as a sealed letter or document dated  
22 December 16, 2013, both from Mr. Reese.

23 Mr. Reese, please rise. Is there anything you would  
24 like to say in your behalf before the Court imposes sentences?

25 THE DEFENDANT: Other than what's in my December 10

E10FREES

Sentence

1 and December 16 I believe it is letter, I have nothing to say,  
2 your Honor. Thank you.

3 THE COURT: Thank you. Be seated.

4 In accordance with the decision by the United States  
5 Supreme Court in United States v. Booker, while the United  
6 States sentencing guidelines are not mandatory, the Court  
7 nonetheless must consult those guidelines and take them into  
8 account when sentencing. Therefore the Court has considered  
9 the findings of fact stated in the presentence investigation  
10 report as well as the guidelines analysis and the  
11 recommendations contained therein. The Court has weighed this  
12 information along with the factors listed in Section 18, United  
13 States Code, 3553 in coming to its final sentencing decision in  
14 this case. The Court adopts the factual recitation in the  
15 presentence investigation report. I have considered the  
16 government's arguments that an enhancement should be granted  
17 for obstruction of justice on an upward adjustment for criminal  
18 history. I am not persuaded that either of those two actions  
19 are called for in this case. Therefore, I am denying the  
20 government's request for adjustments on those two scores.

21 In other respects the Court adopts the factual  
22 recitation and the analysis in the report. Therefore the Court  
23 finds that under the guidelines Mr. Reese's offense level  
24 amounts to 27 and his criminal history category falls into  
25 category IV. The recommended range of imprisonment for that

E10FREES

Sentence

1 offense level and criminal history category is 100 to 125  
2 months' imprisonment followed by a mandatory 24 months'  
3 imprisonment to run consecutively with respect to Count Four.

4 Mr. Reese is found guilty of conspiracy to commit bank  
5 fraud, bank fraud, conspiracy to commit wire fraud and  
6 aggravated identity theft. The probation office has  
7 recommended that the Court impose a sentence of 125 months for  
8 Counts One, two, three, and 24 months on Count Four to run  
9 consecutively to the sentence imposed on Counts One, two and  
10 three.

11 MR. SMITH: Your Honor, if I might add one  
12 qualification. The government reviewed Mr. Reese's most recent  
13 supplemental submission. In that submission he makes one  
14 argument that we don't disagree with, which is that unlike his  
15 co-defendants who were not convicted of aggravated identity  
16 theft, Mr. Reese was and so in calculating the offense level  
17 for his underlying offenses the two-level enhancement for using  
18 authentication features we think should not apply. And the  
19 reason for that is although the commentary in Section 2B1.6  
20 refers to means of identification whereas this enhancement here  
21 is based on authentication features being used, the specific  
22 authentication features that were used in this case also  
23 qualify as means of identification. And so for that reason we  
24 don't oppose Mr. Reese's specific argument with respect to that  
25 2 point enhancement. We otherwise disagree with all the other

E10FREES

Sentence

1 arguments he made in that supplemental submission.

2 THE COURT: Is that statement, Mr. Smith, is that  
3 statement consistent with your argument in your sentencing  
4 memorandum about the authentication?

5 MR. SMITH: It's not, your Honor. So we are --  
6 essentially the way that this developed is Mr. Reese initially  
7 objected to the authentication feature enhancement on the  
8 ground that his offense didn't involve the use of  
9 authentication features and so the government's submission  
10 simply responded to that argument and said that it did. So  
11 we'd agree with the probation office that this enhancement  
12 should apply.

13 Mr. Haber in his supplemental submission points out  
14 that at least in a case involving an aggravated identity theft  
15 count, application note Section 2B1.6 says that this particular  
16 enhancement is already accounted for in the sentence that's  
17 imposed under Section, 18, United States Code, Section 1025A.

18 THE COURT: What implications would that have for the  
19 guidelines range computation?

20 MR. SMITH: Your Honor, we any that that argument  
21 would only apply to the two-level enhancement for the use of  
22 authentication features so it would reduce the offense level by  
23 two points. Otherwise it would have no effect. In particular,  
24 Mr. Haber argues that victims whose identities were used should  
25 not count under that same application note we don't think the

110FREES

Sentence

1 argument can extend that far because the application note makes  
2 clear that what it's referring to is the two-level enhancement  
3 for the use, possession or transfer or other means of  
4 identification and that's the specific offense characteristic  
5 that's being referred to and that enhancement doesn't apply.  
6 But otherwise we think that all the other enhancements  
7 discussed in the PSR are appropriate, even with the  
8 acknowledgment that we make now.

9 THE COURT: My question is does that affect the 27  
10 offense level that the probation department calculated?

11 MR. SMITH: It does, your Honor. It would bring the  
12 level down to 25.

13 THE COURT: And then the question is what does that do  
14 to the guidelines range which is now 100 to 125.

15 MR. SMITH: It would bring it down to 92 to 115, to be  
16 followed by the mandatory two year sentence.

17 THE COURT: Mr. Haber, did you wish to address this  
18 point?

19 MR. HABER: Your Honor, I'm assuming if you reduce it  
20 to a level 25 and criminal history category IV the category is  
21 84 to 105 months, we're on the same page there?

22 MR. SMITH: That's correct, your Honor, 84 to 105 to  
23 be followed by the mandatory term of imprisonment under Section  
24 1028A.

25 THE COURT: All right, thank you.

E1OFREES

Sentence

1                   All right, in light of the government's representation  
2 and its withdrawal of its earlier argument with regards to this  
3 particular two-level enhancement, the Court adopts the position  
4 that has been articulated and finds that in this case,  
5 therefore, the offense level should be 25 and criminal history  
6 category of IV and that would yield, as has been represented, a  
7 guidelines range of 84 to 105 months on Counts One, two and  
8 three followed by 24 months consecutive sentence on Count Four.

9                   Subsection A1 of 18, United States Code, Section 3553  
10 requires that Courts take into consideration the nature and  
11 circumstances of the offense and the history and  
12 characteristics of the defendant, subsection 2 of Section 18,  
13 United States Code, 3553 requires the Court to consider the  
14 need to promote certain objectives of the criminal justice  
15 system mainly punishment, general deterrence and  
16 rehabilitation. Section 3553(a) the Court is to consider the  
17 need to avoid unwarranted sentencing disparities among  
18 defendants with similar records and similar offenses in other  
19 cases as well as in the case at hand.

20                   Mr. Reese, please rise. Taking into account the  
21 nature and circumstances of the offense and the history and  
22 characteristics of the defendant and considering all the  
23 factors listed in Section 18, United States Code, 3553(a) the  
24 Court finds that a sentence of 84 months of imprisonment on  
25 Counts One, two and three and 24 months consecutive

110FREES

Sentence

1       imprisonment on Count Four is reasonable and appropriate and  
2       that such a term or terms are sufficient but not greater than  
3       necessary to promote the proper objectives of sentencing.

4                   Mr. Reese upon your release from imprisonment you  
5       shall be placed on supervised release for a term of three years  
6       on Counts One, two and three and one year on Count Four.  
7       Counts One, two and three to be served concurrently and Count  
8       Four consecutive. So it will be four years. Let me again  
9       underscore that on Counts One, two and three the 84 month term  
10      is to run concurrently.

11                  I will not impose a fine because the Court has  
12       determined that you do not have the ability to pay a fine.  
13       However, you are ordered to pay restitution in the amount to be  
14       determined to such persons as identified by the government as  
15       having been the victims of your crimes. These individuals have  
16       suffered injurieses compensable under the victim and witness  
17       protection act in the amounts preliminarily noted by the  
18       government. No further payment shall be required until the sum  
19       of the amounts actually paid by all of the defendants is  
20       determined. Mr. Smith, under the guidelines you have 90 days  
21       to submit the restitution payment schedule and victims.

22                  MR. SMITH: Yes, your Honor. And I've spoken with  
23       Mr. Haber about those numbers. I think we do have an agreement  
24       on exactly what they are and I'll be submitting the proposed  
25       order for the Court's consideration.

110FREES

Sentence

1                   THE COURT: Thank you. Any payments by the defendant  
2 shall be divided among the persons named in proportion to their  
3 compensable injuries. Restitution shall be paid in monthly  
4 installments of 15 percent of gross monthly income over the  
5 period of the supervision to commence 30 days after the release  
6 from custody.

7                   Mr. Reese you shall notify the United States Attorney  
8 for this district within 30 days of any change of mailing or  
9 residence address that occurs while any portion of the receipts  
10 Constitution remains unpaid. You are also ordered to pay to  
11 the United States a special assessment of \$400 which shall be  
12 due immediately.

13                   Mr. Smith, is there any forfeiture provision in this  
14 case?

15                   MR. SMITH: Yes, there is, your Honor, and the amount  
16 of proceeds involved here was \$176,000. I don't think there's  
17 any objection to that amount.

18                   MR. HABER: I think we need to see the numbers before  
19 we agree to that. Do we have a calculation?

20                   THE COURT: Why don't you work that out with the  
21 government, and Mr. Smith when you have a forfeiture order with  
22 an agreed amount you may submit it. If there's a disagreement  
23 then we can call a conference to discuss the matter.

24                   MR. HABER: That's fine.

25                   THE COURT: Mr. Reese you must supply with standard

1 EOFREES

2 Sentence

3 conditions 1 through 13 of supervised release and the following  
4 manned today tier conditions. You shall not commit another  
5 federal, state or local crime. You shall not illegally possess  
6 a controlled substance. You shall not possess a firearm or  
7 destructive device. You shall cooperate in the collection of  
8 DNA as provided by the probation officer. The mandatory drug  
9 testing is suspended based on the determination by the Court  
10 you provide a low risk of future substance abuse.

11 In addition, Mr. Reese, you shall comply with the  
12 following special conditions:

13 You shall provide the probation officer with access to  
14 any requested financial information. You shall commit your  
15 person, premises, place of business or vehicle or any premises  
16 under your control to a search on the ground that the probation  
17 officer has reason to believe that contraband or evidence of a  
18 violation of the conditions of release may be found. The  
19 search must be conducted at a reasonable time and in a  
20 reasonable manner. Failure to submit to search may be grounds  
21 for revocation. You shall inform any other residents that the  
22 premises may be subject to search pursuant to this condition.  
23 Mr. Smith, do you understand each of these conditions?

24 MR. SMITH: I do, yes, your Honor.

25 THE COURT: I'm sorry, Mr. Reese.

THE DEFENDANT: I didn't respond because --

THE COURT: I'm sorry. Mr. Reese, do you understand

1 EOFREES

2 Sentence

3 each of these conditions?

4 THE DEFENDANT: I do.

5 THE COURT: I take it for granted the government  
6 understands them.7 The Court recommends that you be supervised by the  
8 district of residence. The sentence as stated is imposed.  
9 Mr. Reese to the extent you have the right to appeal your  
10 sentence and you are unable to pay the cost of your appeal you  
11 have the right to apply in forma pauperis meaning as a poor  
12 person. If you make such a request the clerk must prepare and  
13 file a notice of appeal on your behalf. Do you understand your  
14 rights as it may exist?

15 THE DEFENDANT: I do, your Honor.

16 THE COURT: Thank you. Mr. Haber requested that the  
17 Court recommends that Mr. Reese be held in custody at the MCC  
18 pending for 90 days. The Court will so recommend. Mr. Smith,  
19 are there remaining counts or underlying indictments that need  
20 to be dismissed at this time?21 MR. SMITH: There are not, but out of an abundance of  
22 caution we would move to dismiss.23 THE COURT: All right, thank you. Is there anything  
24 else from the government?

25 MR. SMITH: Nothing, your Honor.

THE COURT: Anything else, Mr. Haber?

MR. HABER: No, thank you, your Honor.

E10FREES

Sentence

1                   THE COURT: Thank you and have a good day and a good  
2 weekend.

3                   (Adjourned)

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